

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Sprint Nextel Request for Limited)	WT Docket No. 05-286
Waiver of the December 31, 2005)	
Deadline to Achieve Ninety-Five)	
Percent Penetration of Location-Capable)	
Handsets Among Its Subscribers)	

REPLY OF SPRINT NEXTEL CORPORATION

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Summary

The Commission should expeditiously grant Sprint Nextel's request for a limited and temporary waiver of the December 31, 2005, Enhanced 911 ("E911") benchmark requiring that 95% of Sprint Nextel's active subscriber handsets be Global Positioning Satellite ("GPS") capable. Commenters on this request, as well as a related industry-wide petition, recognize the substantial challenges confronting Sprint Nextel and other carriers as they attempt to meet the Commission's 95% handset penetration deadline. A careful analysis of the unforeseen and extraordinary circumstances that have undermined Sprint Nextel's aggressive compliance efforts since 2001, as well as the steps it has taken to overcome those circumstances, shows that there is a compelling justification for a grant of Sprint Nextel's requested relief.

A confluence of events beyond Sprint Nextel's control will prevent Sprint Nextel from meeting the December 2005 95% handset penetration benchmark. Sprint Nextel's compliance efforts were hindered by a delay in the availability of GPS-enabled handsets for its iDEN network. Since July 2004, Sprint Nextel has also had to overcome the effects of an unforeseeable, latent software defect that effectively disabled GPS functionality on millions of iDEN handsets. Finally, the rate of iDEN handset replacement by Sprint Nextel customers has been significantly lower than the Commission anticipated when it set the benchmark for GPS-enabled handset penetration at 95%. In light of these factors, and Sprint Nextel's extensive efforts to overcome these obstacles, it would be inequitable and contrary to the public interest for the Commission to require Sprint Nextel's strict compliance with the December 2005 benchmark.

Sprint Nextel respectfully submits that waiver of Sprint Nextel's 95% handset penetration benchmark will not undermine the policies underlying the Commission's E911 rules. A majority of PSAPs have not yet upgraded their facilities, and with the full safety benefits of owning a GPS-enabled handset yet to be realized, the public interest will not be harmed by a grant of Sprint Nextel's requested relief.

While APCO and NENA have asked the Federal Communication Commission ("FCC" or "Commission") to closely examine the basis for Sprint Nextel's waiver request, Sprint Nextel can demonstrate that it has taken concrete steps to come as close as possible to compliance with the Commission's E911 requirements. Sprint Nextel has made vigorous, ongoing remedial efforts to rectify the effects of the GPS software glitch and has taken more general steps to address the lower-than-anticipated rate of handset replacement among its subscribers. For example, Nextel's 2004 marketing budget for handset upgrades was unprecedented, approximately *double* the amount Nextel typically spent annually to market new phones.

Sprint Nextel has established a clear path to full compliance with the Commission's 95% handset penetration benchmark. Sprint Nextel has taken and will continue to take a number of activities to persuade customers to upgrade from non-GPS-enabled handsets to GPS-enabled units, including significant marketing and promotional efforts during 2006 and 2007. Finally, Sprint Nextel's sales momentum is expected to increase with the expanded scale of the new company, a factor that should increase the rate of customer purchases of GPS-capable handsets.

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REPLY OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint Nextel”)¹ hereby replies to comments relating to its request for a limited and temporary waiver of the December 31, 2005, Enhanced 911 (“E911”) benchmark requiring that 95% of Sprint Nextel’s active subscriber handsets be GPS-capable.² In their comments, all parties recognize the substantial challenges confronting Sprint Nextel and other carriers as they attempt to meet the Federal Communication Commission’s (“FCC’s” or “Commission’s”) 95% handset penetration deadline. Two commenters, however, the Association of Public-Safety Communications Officials-International, Inc. (“APCO”) and the National Emergency Number Association (“NENA”), urge the Commission to subject Sprint Nextel’s waiver request to close examination.³

¹ Sprint Nextel Corporation is the result of a merger between Sprint Corporation and Nextel Communications, Inc., which closed on August 12, 2005. The terms “Sprint” and “Nextel” refer to those entities as they existed prior to the closing of that transaction.

² 47 C.F.R. §20.18(g)(1)(v). See “Wireless Telecommunications Bureau Requests Comment on Sprint Nextel Request for Limited Waiver of the December 31, 2005 Deadline to Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among Its Subscribers,” Public Notice, WT Docket No. 05-286 (rel. Oct. 7, 2005).

³ Comments of APCO, WT Docket Nos. 05-286, 05-287, 05-288 (Oct. 21, 2005); Comments of NENA, WT Docket Nos. 05-286, 05-287, 05-288 (Oct. 21, 2005). As discussed at 3 *infra*, comments filed on the same date on a joint petition from CTIA – The Wireless Association (“CTIA”) and the Rural Cellular Association (RCA”) for

Sprint Nextel welcomes such rigorous scrutiny. Once the Commission reviews the exceptional circumstances underlying Sprint Nextel's request, it should conclude that a grant of limited, temporary relief is consistent with and would further its E911 waiver policies. Sprint Nextel remains committed to reaching the 95% handset penetration benchmark as soon as possible, and looks forward to working with the Commission to expedite E911 implementation and achieve other critical public safety goals.

I. COMMENTERS RECOGNIZE THE SUBSTANTIAL CHALLENGES CONFRONTING SPRINT NEXTEL

In response to the Commission's recent E911 public notices, commenters recognize the substantial challenges facing Sprint Nextel and other carriers attempting to comply with the Commission's 95% handset penetration benchmark. In their comments on Sprint Nextel's request, Motorola, Inc. ("Motorola") and CTIA – The Wireless Association ("CTIA") agree that Sprint Nextel has shown good cause for a grant of this waiver.⁴ In particular, Motorola is well aware of Nextel's E911 compliance efforts; as the sole source supplier of iDEN network technology and handsets, Motorola worked with Nextel to design and build the iDEN Phase II solution from scratch and participated in efforts to rectify the effects of the 2004 GPS software glitch, as discussed further below.

suspension or waiver of the December 31, 2005, benchmark provide additional support for Sprint Nextel's waiver request. *See* Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Docket No 05-288 (June 30, 2005) ("Petition of CTIA/RCA"); "Wireless Telecommunications Bureau Requests Comment on Joint Petition of CTIA and RCA," *Public Notice*, WT Docket No. 05-288 (Oct. 7, 2005).

⁴ Comments of Motorola, Inc., WT Docket No. 05-286 (Oct. 21, 2005); Comments of CTIA – The Wireless Association, WT Docket No. 05-286 (Oct. 21, 2005).

Equipped with this first-hand knowledge, Motorola comments that “the information presented in its request clearly demonstrates that Sprint Nextel has met all of the criteria for a waiver.”⁵ CTIA also notes that Sprint Nextel has “faced tremendous obstacles beyond its control,” and states that “Sprint Nextel has been vigilant in its efforts to comply with the Commission’s rules, has invested significant resources to meet the Commission’s interim benchmarks for deployment of handsets with location capabilities, and has instituted aggressive marketing campaigns to encourage handset replacement.”⁶

In addition to the record compiled in support of Sprint Nextel’s petition, a number of other parties filed comments expressing support for the joint request from CTIA and the Rural Cellular Association (“RCA”) for a suspension of the December 31, 2005, benchmark for those carriers for whom “100 percent of all new digital handsets activated are location capable.”⁷ Because Sprint Nextel meets CTIA/RCA’s digital handset criterion, comments supporting the CTIA/RCA petition in effect support Sprint Nextel’s waiver request. If that petition were granted, Sprint Nextel would receive relief similar to that requested in its own waiver filing.

Notably, the National Association of Regulatory Utility Commissioners (“NARUC”) filed comments supporting CTIA/RCA’s petition and asking that this rule suspension be effective at least until the 2008 termination of the Commission’s analog

⁵ Comments of Motorola at 1.

⁶ Comments of CTIA at 1-2.

⁷ Petition of CTIA/RCA at 1. CTIA/RCA’s proposed suspension of Section 20.18(g)(1)(iv) would apply until a carrier reached the 95% penetration benchmark.

service requirement.⁸ According to NARUC, delayed application of the 95% benchmark is necessary to protect rural consumers who might otherwise have to give up older wireless handsets that provide greater range.⁹ The South Dakota Public Utilities Commission expressed similar support for CTIA/RCA's proposed rule suspension.¹⁰

In their comments, APCO and NENA commend Sprint Nextel's deployment of E911 capability on its CDMA network, but raise questions regarding Sprint Nextel's implementation efforts with respect to its iDEN operations.¹¹ These public safety organizations do not argue that Sprint Nextel should be denied relief, however. Rather, they urge that the Commission closely examine the circumstances behind this request and the appropriate length of an extension of the December 31, 2005, benchmark. As indicated above, Sprint Nextel welcomes this scrutiny. As explained below, a careful analysis of the unforeseen and extraordinary circumstances that have undermined Sprint Nextel's aggressive compliance efforts since 2001, as well as the steps it has taken to overcome those circumstances, shows that there is a compelling justification for a grant of this waiver request.

⁸ Initial Comments of NARUC Supporting the Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Rule, WT Docket No. 05-288, at 1-4 (Oct. 17, 2005).

⁹ Comments of NARUC at 3-4. In July 2005, NARUC also issued a formal resolution supporting the CTIA/RCA petition.

¹⁰ Comments of the South Dakota Public Utilities Commission, WT Docket 05-288, at 2-5 (Oct. 17, 2005).

¹¹ Comments of APCO at 5-6; Comments of NENA at 7-9.

II. SPRINT NEXTEL SATISFIES THE LEGAL REQUIREMENTS FOR A LIMITED, TEMPORARY WAIVER OF THE COMMISSION'S E911 RULES

Sprint Nextel shares the commitment of APCO, NENA, and other public safety entities to improved emergency communications around the country. As described, in its waiver request, Sprint Nextel has moved aggressively to implement the Commission's E911 mandate since its adoption. Like other elements of the Commission's E911 framework, the Commission's 95% benchmark for GPS-enabled handset penetration will ultimately have significant public interest benefits, ensuring that the vast majority of wireless subscribers calling 911 can be located rapidly and effectively by emergency personnel.

At the same time, Sprint Nextel has had to contend with and overcome several very formidable obstacles that were beyond its control and that justify the request for a two-year extension of the Commission's December 31, 2005, handset penetration benchmark. In response, APCO and NENA raise general questions about the strength of Sprint Nextel's showing.¹² The Commission is legally bound to carry out a rational, straightforward review of the circumstances described in Sprint Nextel's waiver request, guided by its well-established general waiver standard and the specific requirements for waivers of its E911 rules. Below, Sprint Nextel applies these standards, replies to comments filed, and reviews the factors that justify grant of its waiver request.

A. Sprint Nextel Satisfies the Commission's General Requirements for Waiver of Its Rules

As described in Sprint Nextel's waiver request, the Commission's general requirements for waiver of its rules are well established. Under Section 1.3 of its rules,

¹² Comments of APCO at 5-6; Comments of NENA at 7-9.

the Commission may grant relief from its rules for good cause shown.¹³ The Commission finds that “good cause” exists where the particular facts faced by the petitioner would make strict compliance inconsistent with the public interest, and where the relief requested would not undermine the policy served by the rule.¹⁴ As the court established in *WAIT Radio*, the promulgation of rules in the public interest “does not relieve [an agency] of an obligation to seek out the ‘public interest’ in particular, individualized cases,” and it must take into account “considerations of hardship, equity, or more effective implementation of overall policy.”¹⁵

1. Given the confluence of extraordinary circumstances beyond Sprint Nextel’s control, grant of its waiver request is in the public interest

As described in Sprint Nextel’s waiver request, its inability to meet the December 2005, Benchmark for its iDEN network is the result of three developments beyond its control. These factors represent the type of particularized, extraordinary circumstances that make the grant of a waiver appropriate.¹⁶

First, Sprint Nextel’s compliance efforts suffered a significant setback due to the delayed availability of GPS-enabled handsets for its iDEN network. While Sprint Nextel

¹³ See 47 C.F.R. § 1.3.

¹⁴ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (waiver appropriate where “particular facts would make strict compliance inconsistent with the public interest”).

¹⁵ *WAIT Radio*, 418 F.2d at 1157, 1159.

¹⁶ See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, ¶ 43 (2000) (“*Fourth MO&O*”) (stating that “we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible” by the established deadline, and “could be dealt with through individual waivers”).

was the only carrier to begin selling GPS-enabled CDMA handsets by the Commission's October 1, 2001, deadline, GPS-enabled iDEN handsets did not become available until October 2002. As Sprint Nextel has explained, because iDEN is a unique technology, Nextel concluded that its unique iDEN network could accommodate only one possible effective solution for E911 compliance, a handset-based GPS system provided by Motorola, the single source for iDEN handsets. Nextel and Motorola together designed and built the Phase II solution for iDEN, launching a GPS-capable handset in approximately *half* the time it typically takes to design and launch an iDEN handset. It was technologically infeasible, however, to complete Phase II deployment throughout Nextel's network prior to October 1, 2002, a fact that the Commission acknowledged in its 2001 Nextel waiver order.¹⁷ As a result of this delay, Sprint Nextel lost approximately one quarter of the time that it had to meet the December 2005 benchmark.

Second, Sprint Nextel had to overcome the effects of an unforeseeable, latent software defect that effectively disabled GPS functionality on millions of iDEN handsets. As Sprint Nextel described in its waiver request, at midnight Greenwich Mean Time, July 18, 2004, this software problem suddenly caused several million GPS-capable handsets owned by Nextel customers to cease transmitting E911 Phase II location information, rendering all of these units' GPS services unusable. Testing by Motorola had failed to

¹⁷ In granting Nextel's E911 waiver request in 2001, the Commission recognized that Nextel faced "special circumstances that affect its deployment of Phase II" because of the low market share of iDEN in the U.S. mobile telephony market, and Nextel's reliance on a single provider of iDEN handsets and network equipment that would require development and modification to accommodate Automatic Location Information ("ALI") capabilities. *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc.*, Order, 16 FCC Rcd 18277, ¶ 19 (2001) ("Nextel Phase II Order").

detect this defect. Overnight, Nextel went from having more than 4.7 million Phase II-compliant handsets on July 17 to zero Phase II-compliant handsets on July 18. While Nextel has mounted a vigorous and unprecedented campaign to rectify the effects of this software failure, most affected customers have yet to upgrade or return these handsets and regain GPS capability.

Finally, the rate of iDEN handset replacement by Sprint Nextel customers has been significantly lower than the Commission anticipated when it set the benchmark for GPS-enabled handset penetration at 95%. This lower-than-expected rate of iDEN handset replacement is due in significant part to the fact that, prior to the merger, much of Nextel's subscribership was made up small, medium, and large businesses, and government organizations. Government agencies often lack the budgetary resources to make handset upgrades, while business customers will often reject such capital expenditures without a compelling business justification.

In addition, many of Nextel's individual customers wanted to avoid the inconvenience of transitioning to a new handset, or did not want to give up the greater coverage provided by some older handsets in rural areas.¹⁸ Finally, the consistently low churn for Nextel's iDEN customer base over the past several years has also slowed handset replacement. Unfortunately, Nextel's success in satisfying and retaining its iDEN customers actually impeded its E911 compliance efforts, since subscriber churn can help a carrier increase its level of GPS-enabled handset penetration.¹⁹

¹⁸ See Comments of NARUC at 3-4; Comments of South Dakota Public Utilities Commission at 2-3.

¹⁹ Another factor possibly slowing customer adoption of GPS-enabled iDEN handsets is the lack of PSAP readiness to utilize Phase II data (discussed *infra* at 9-10), and Sprint Nextel's resulting inability to advertise the availability of location-based

This confluence of events beyond Sprint Nextel's control has made it impossible for it to meet the December 2005 95% handset penetration benchmark.²⁰ The unavoidable delays in the availability of a GPS-enabled iDEN handset gave Nextel less time to reach this threshold, and satisfaction with existing iDEN handsets has made consumers reluctant to upgrade to GPS-enabled devices. These substantial problems were then exacerbated by the unforeseeable software failure that rendered another substantial block of iDEN handsets non-compliant. In light of these factors, and Sprint Nextel's extensive efforts to overcome these obstacles (described below), it would be inequitable and contrary to the public interest for the Commission to require Sprint Nextel's strict compliance with the December 2005 benchmark.

2. Grant of the requested waiver will not undermine the policies underlying the Commission's E911 rules

Sprint Nextel respectfully submits that waiver of the 95% handset penetration benchmark will not undermine the policies underlying the Commission's E911 rules.²¹ First, as Sprint Nextel described in its waiver request, this temporary waiver would have only a limited impact on PSAP processing of ALI. A majority of PSAPs have not yet upgraded their facilities, and these PSAPs remain unable to utilize Phase II data.²² In

emergency service to encourage the purchase of these handsets. While NENA denies that such PSAP issues have an effect on handset penetration (Comments of NENA at 4), current conditions prevent national carriers such as Sprint Nextel from emphasizing the E911 benefits of these handsets.

²⁰ The Commission has held that milestone extensions and waivers are appropriate when non-compliance is due to "matters outside [the petitioners'] control." *South Central Bell*, 4 FCC Rcd 1044, ¶8 (1988). See also *E911 Phase II Waiver Reconsideration Order*, 18 FCC Rcd 21813, ¶ 19 (2003); *Fourth MO&O* ¶ 45.

²¹ See *WAIT Radio*, 418 F.2d at 1157.

²² According to the most exhaustive study to date (and one commissioned by NENA), *fewer than half of all PSAPs* (covering an estimated 62% of the United States'

fact, there continue to be thousands of PSAPs from which Sprint Nextel has received neither a Phase I nor a Phase II request. With the full safety benefits of owning a GPS-enabled handset yet to be realized, Sprint Nextel believes that the public interest will not be harmed by a grant of its requested relief.²³

B. Sprint Nextel Meets the Waiver Requirements Specific to the Commission's E911 Rules

As detailed in the Sprint Nextel waiver request, the Commission has identified specific criteria for waivers of its E911 Phase II requirements. Citing instances "where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible" by the established deadline, the Commission stated that such E911 waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance." In addition, the Commission stated that carriers seeking such a waiver should demonstrate that they had "undertake[n] concrete steps necessary to come as close as possible to full compliance" with the Commission's E911 rules.²⁴ As shown below, Sprint Nextel satisfies these specific requirements for an E911 waiver.

population) are likely to be capable of receiving and using Phase II ALI by December 31, 2005. The study finds that fewer than 70% of PSAPs will be capable of receiving and using Phase II ALI by year-end 2007.

²³ Significantly, grant of Sprint Nextel's requested waiver could actually promote the Commission's E911 policy objectives by preserving some consumers' emergency communications capability in rural areas. As detailed in Sprint Nextel's waiver request, older model "base" and "mobile" iDEN units (often installed in automobiles or in fixed locations) typically have greater range than new iDEN handsets, including units with GPS capability, and are a valuable means of connecting to 911 emergency call centers in certain rural areas. Not surprisingly, as NARUC points out, many rural customers for these reasons are reluctant to replace these devices. Comments of NARUC at 3-4.

²⁴ *Fourth MO&O* ¶ 44.

1. Sprint Nextel has taken concrete steps to come as close as possible to compliance with the Commission's E911 requirements

APCO and NENA question whether Sprint Nextel has taken all reasonable measures to maximize the level of customer handset replacement and comply with the Commission's 95% benchmark.²⁵ In fact, consistent with the Commission's E911-specific waiver standard, Sprint Nextel has taken "concrete steps to come as close as possible to full compliance" with the FCC's E911 mandate.²⁶ Sprint Nextel has not in any sense "undertake[n] a minimalist approach" toward compliance.²⁷

Sprint Nextel has aggressively pursued compliance with the Commission's E911 mandate, including the GPS-enabled handset penetration benchmark. With respect to its CDMA operations, Sprint Nextel met or exceeded every E911 benchmark set forth in the *Sprint Phase II Order*.²⁸ With respect to its iDEN network, Sprint Nextel met or exceeded each of the interim Phase II benchmarks established in the *Nextel Phase II Order* (with only a short deviation from the December 1, 2004, 100% GPS activation requirement).²⁹ As detailed above, Sprint Nextel managed to achieve the required October 1, 2002, launch for GPS-enabled iDEN handsets through extraordinary efforts and coordination with Motorola and other entities. Since February 2005, all of Sprint

²⁵ Comments of APCO at 5-6; Comments of NENA at 6-9].

²⁶ *Fourth MO&O* ¶ 44.

²⁷ *Fourth MO&O* ¶ 45.

²⁸ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS*, Order, 16 FCC Rcd 18330, ¶¶ 28-30 (2001) ("*Sprint Phase II Order*").

²⁹ *See Nextel Phase II Order*.

Nextel's new iDEN handset activations have been GPS-capable, with the exception of one BlackBerry™ model and a handful of legacy models.³⁰

NENA notes that the Commission's waiver grant in the *Nextel Phase II Order* directed that Nextel aggressively pursue deployment of Phase I implementation. NENA questions Nextel's efforts in this area, pointing out that (i) Nextel has in many cases not completed Phase I implementation within a six-month window and (ii) it has pending Phase I deployment requests from more than 500 PSAPs.³¹ In fact, there is no basis for assigning fault to Nextel (and now Sprint Nextel) with respect to these issues. First, as NENA acknowledges, the Commission's rules permit Phase I implementation to exceed six months if there is mutual agreement among the parties; such agreement was reached in these cases.³²

With respect to pending requests, as the FCC is aware, deployment of Phase I and Phase II E911 requires a cooperative and coordinated effort by numerous parties, including the wireless carrier, local exchange carriers ("LECs"), location technology vendors, ALI database vendors, and the PSAP. Sprint Nextel is in contact with each of the relevant PSAPs and is working to deploy Phase I E911 as soon as possible. At the same time, like Phase II deployments, Phase I E911 deployments continue to be complicated by a number of factors, many of which are outside of Sprint Nextel's control.

³⁰ Sprint Nextel has not purchased non-GPS iDEN models for new sales since early in 2004 or non-GPS enabled CDMA models since January of 2003.

³¹ Comments of NENA at 8 (citing Nextel's August 1, 2005, E911 quarterly report).

³² 47 C.F.R. §20.18(j)(5).

As described above, the latent software glitch that disabled all GPS functionality on Sprint Nextel's iDEN network was unforeseeable and beyond the control of Sprint Nextel, and has been a primary factor in Sprint Nextel's inability to meet the December 2005 benchmark. Sprint Nextel disagrees with NENA's attempt to downplay Nextel's extensive efforts to overcome this formidable technical obstacle.³³ These vigorous, ongoing remedial efforts are as much a part of Sprint Nextel's compliance efforts as the engineering expertise that enabled the incorporation of GPS capability into iDEN handsets. These efforts, described below, should weigh heavily in favor of a grant of Sprint Nextel's waiver request.

Following the software failure, Nextel and Motorola personnel worked around the clock to resolve technical issues on the iDEN network, and within just six days ALI could once again be transmitted to Phase II-capable PSAPs. Nextel then initiated a massive and unprecedented campaign to encourage its customers to "reflash" their handsets. Within days of developing the software necessary to correct the iDEN handset glitch, Nextel began reflashing handsets within its control; approximately one million handsets in inventory were reflashed prior to being sold to consumers. Nextel and Motorola then delivered, free of charge, "self-reflash" kits to the approximately 2.14 million customers with affected handsets, allowing these customers to reflash their handsets themselves at their convenience at home.³⁴ Additionally, Sprint Nextel's and Motorola's web sites provide customers with instructions on self-reflashing. To Sprint Nextel's knowledge,

³³ Comments of NENA at 7.

³⁴ As of July 2005, approximately 3.5 million active Nextel customers possessed GPS handset models that were affected by the software glitch and could be reflashed.

providing these self-reflash kits directly to all affected customers is an effort that is unprecedented in any industry.³⁵

Subsequently, Nextel continued to contact affected customers through direct mailings to encourage the reflashing of handsets, and together with Motorola even initiated a sweepstakes program with total prize values exceeding \$1.2 million. Nextel's large corporate customers received software upgrades on site, and Nextel made direct attempts to replace affected handsets in the hands of certain customer groups, including PSAP personnel, that potentially relied upon GPS-enabled services. Nextel also significantly changed its business practices in order to "touch" as many customers affected by the GPS software glitch as possible. For example, any customer has been able to walk in to any legacy Nextel store or authorized dealer and ask that his or her handset be reflashed with new software free of charge.³⁶ In addition, legacy Sprint stores were recently equipped to conduct reflashing of handsets, at least doubling the number of locations for this activity. Finally, whenever a customer calls Nextel's customer care number, he or she is urged to reflash his or her handset.³⁷

Beyond these concerted efforts to address the impact of the GPS software problem, Sprint Nextel has taken more general steps to address the lower-than-anticipated rate of handset replacement among its subscribers. Prior to its merger with Sprint, Nextel

³⁵ Even in the automotive industry, the typical practice is to send a letter to customers requesting that they bring their car to a dealership for repair.

³⁶ Independent dealerships that carry Nextel handsets are also capable of reflashing customer handsets, and Motorola has put in place an incentive program for dealers to reflash a handset brought in for any reason.

³⁷ At Appendix A, Sprint Nextel provides documentation of its extraordinary efforts to encourage its customers to reflash their handsets. This attachment provides a chronology of communications aimed directly at Nextel's customers, PSAPs, and Nextel's sales agents.

devoted substantial resources to increasing its GPS handset penetration rate as much as possible. While NENA questions Nextel's marketing efforts,³⁸ Nextel in fact implemented a number of marketing and promotional campaigns last year, including equipment discounts, to encourage its customers to upgrade their handsets. For example, on a regular basis and for several months, Nextel printed advertisements on the first page of USA Today's Life section that promoted location-enhanced services offered on its GPS-enabled handsets. Significantly, Nextel's 2004 marketing budget for handset upgrades was unprecedented, approximately *double* the amount Nextel typically spent annually to market new phones.

As detailed in its waiver request, Sprint Nextel is running new promotions to encourage its subscribers to replace older iDEN units with GPS handsets, and offering similar promotions for GPS-capable CDMA handsets. Such promotions offer customers certain GPS-capable handsets for free with a service contract, or other GPS-capable handsets at discount prices.³⁹ Sprint Nextel also actively encourages its customers to donate phones, and provides donors with tax receipts that encourage them to turn in older model handsets.⁴⁰ As indicated at note 19 *supra*, however, the lack of PSAP deployment of Phase II E911 service prevents Sprint Nextel from directly advertising the public safety benefits of these newer handsets.

While Sprint Nextel is committed to continuing its extraordinary steps, including marketing, promotional, and informational activity, to convince subscribers to upgrade to

³⁸ Comments of NENA at 8-9.

³⁹ At Appendix B, Sprint Nextel provides a sample of such promotional advertising.

⁴⁰ Older phone models processed through Nextel benefit the American Red Cross and the Armed Services. See <http://www.nextelbuyback.com/>, visited on May 6, 2005.

GPS-capable handsets, its experience has demonstrated that a certain portion of its customer base is highly unlikely to upgrade voluntarily to a new handset, despite various incentive programs and the availability of attractive new handsets. Given this reality, Sprint Nextel and other carriers ultimately are limited in their ability to overcome low rates for handset replacement. In Sprint Nextel's view, it is not in the public interest for government or industry to *force* consumers to abandon their handsets. If customers are satisfied with their current service, have no desire to acquire a GPS-enabled handset, and potentially gain no public safety or other benefit from such an upgrade, the Commission should not compel the replacement of such handsets.

2. Sprint Nextel has established a clear path to full compliance

As described in the waiver request, Sprint Nextel has established a clear path to full compliance with the 95% handset penetration benchmark. Specifically, Sprint Nextel will be undertaking a number of activities to encourage further reflashing of handsets affected by the software glitch, and to persuade additional existing customers to upgrade from non-GPS-enabled handsets to GPS-enabled units.⁴¹

Through 2006 and 2007, Sprint Nextel will continue the marketing and promotional activity made possible by Sprint Nextel's recent budget increase for upgrade

⁴¹ Sprint Nextel's detailed, fully considered "clear path" to compliance with the Commission's 95% benchmark contrasts with the showing made by Key Communications, LLC and Keystone Wireless in support of their recent E911 waiver request. Those Tier III providers were pursuing a hybrid Phase II location solution through their GSM wireless networks, but still had not obtained location-capable GSM handsets or provided an alternative plan should they remain unavailable. Despite the fact that these carriers had not even begun to sell GPS enabled devices, the Commission granted them an extension of time and permitted them to augment the record on their requests. *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, CC Docket No. 94-102, ¶¶ 12, 17-20 (rel. Oct. 21, 2005).

activity. Existing customers will continue to be able to purchase GPS-enabled devices at promotional discounts, including at least one GPS-enabled handset for free with a service contract, and Sprint Nextel will promote new GPS-enabled iDEN handsets with attractive new features and price points. GPS handset capabilities will be highlighted in broad advertising campaigns, including on television. In particular, Sprint Nextel is developing a marketing campaign, with favorable price plans, targeted at customers whose handsets are not GPS-capable to encourage them to upgrade to GPS-enabled handsets. Sprint Nextel hopes to provide an economic incentive to corporate, small business, and government users who may otherwise be unwilling to upgrade older handsets. Sprint Nextel is also discussing a handset upgrade incentive program with Motorola.

Specifically, going forward, Sprint Nextel's marketing and advertising activities will include the following:

- Television and radio commercials for Sprint Nextel handsets and service – featuring promotional discounts for handsets (*e.g.*, buy one and get one free); focusing on or referencing the handsets' GPS capability
- Print advertisements for Sprint Nextel handsets and service – emphasizing greater choice in handsets, services, and rate plans as result of the merger; featuring promotional discounts for handsets (*e.g.*, buy one and get one free); focusing on or mentioning GPS capability of Sprint Nextel handsets, including iDEN units
- Billboard advertisements for Sprint Nextel handsets and service – highlighting the new brand; emphasizing greater choice in handsets and services; referencing GPS capability of Sprint Nextel handsets.⁴²

Developments directly related to the merger of Sprint and Nextel should further increase the penetration of GPS-enabled handsets. Sprint Nextel's rapid deployment of new technologies will likely make its GPS-enabled handsets more attractive to consumers

⁴² At Appendix C, Sprint Nextel provides a sample of these various advertising materials, designed to use the company's new brand to attract customers and increase sales of GPS-capable handsets.

than previous offerings from Sprint and Nextel individually. Sprint Nextel is also exploring the offering of new dual-mode handsets for its iDEN network, an alternative that will be attractive for existing customers. As a general matter, Sprint Nextel's sales momentum is expected to increase with the expanded scale of the new company, a factor that should increase the rate of customer purchases of GPS-capable handsets.

III. CONCLUSION

For the foregoing reasons and the reasons set forth in its initial request, Sprint Nextel urges the Commission to grant the waiver relief specified herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Claudia Del Casino, do hereby certify that on this 31st day of October, 2005, copies of the foregoing Reply Comments were delivered by first-class, postage-prepaid mail, unless otherwise indicated, to the following parties:

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